Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Qwest Communications International, Inc.	)	**WC Docket No. 02-189**
	)	
For Authorization to Provide In-Region,	)	
InterLATA Services in the States of Montana,	)	
Utah, Washington and Wyoming	)	
	)	

To: The Commission

COMMENTS OF ESCHELON TELECOM, INC. IN OPPOSITION TO THE CONSOLIDATED APPLICATION OF QWEST COMMUNICATIONS INTERNATIONAL INC FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN MONTANA, UTAH, WASHINGTON AND WYOMING

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TABLE OF CONTENTS

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Eschelon Telecom, Inc. ("Eschelon") submits these Comments in response to the Federal Communications Commission's ("FCC's") Public Notice requesting comments on the Application by Qwest Communications International, Inc. ("Qwest") for authorization under Section 271 of the Communications Act to provide in-region, interlata service in the states of Montana, Utah, Washington and Wyoming ("Qwest's Application"). Eschelon believes that approving Qwest's Application at this time would be premature, given the problems with Qwest's commercial performance.

For example, two significant omissions in Qwest's performance reporting add up to a situation in which a tremendous amount of Eschelon's adverse experiences in its commercial interactions with Qwest are not accounted for when Qwest reports its performance. Together, these omissions help explain why Eschelon's view that Qwest's commercial performance falls far short of the mark is so at odds with Qwest's claims of exemplary performance. The U.S. Department of Justice has recognized these two omissions in Qwest's performance data: (1) **manual handling**: "Qwest does not have any regularly reported commercial performance data on the accuracy of its manual order processing"; and (2) **service order accuracy**: "Qwest's regularly reported installation quality measure does not include troubles that are submitted for missing features as Qwest considers those as raising an order processing rather than a provisioning issue." *See* DOJ Eval. (Qwest I), p. 19 & note 83.[1] Performance problems relating to Qwest's inadequate manual handling of orders and its service order inaccuracies, however, are at the root of many problems.

Eschelon has been including service affecting troubles (including feature problems) in its performance measure for Qwest's new service installation quality. As shown in Exhibit 1, when this key information is included in the measure, the results show the true state of Qwest's performance. For Off-Net (UNE-P and UNE-E) orders, for example, Qwest's performance has been above 60% only once in the last 6 months. Generally, 60% carries a grade of D. From December of 2001 through May of 2002, Qwest's performance for new service installation quality for Off-Net orders averaged 49.3%, and the trend is downward. *See id*. This means that, ***more than 50% of the time***, these customers experience service affecting troubles within 30 days of installation. Qwest's retail customers do not regularly experience more than 50% of orders having troubles within 30 days of installation, and Qwest's wholesale customers should not be subjected to this experience either.

[1] Evaluation of the United States Department of Justice, *In the Matter of Qwest Communications International, Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota ("Qwest I")*, FCC Docket No. 02-148 (July 23, 2002) ("DOJ Eval. (Qwest I)").

Although Qwest claims to be working on measures to address this significant omission in its reporting, those measures are not finalized. They are undeveloped, untried, untested, and unaudited. The same is true for many of the "fixes" that Qwest is now proposing or claiming to have implemented in response to Competitive Local Exchange Carrier "(CLEC") comments on Qwest's earlier 271 application (Qwest I).[2] Some of the concerns that Qwest is now addressing with last-minute changes were raised by Eschelon in September of 2000. *See* Exhibit 2. The fact that Qwest is making the changes confirms that CLEC concerns addressed by the changes had merit.

While Eschelon is pleased to finally receive promises of progress in some of the areas identified by Eschelon, a promise is not enough to show 271 compliance. In some cases, Qwest has said it will make changes but has not done so. In others, Qwest indicated that it has recently made changes (such as in the last week or two), but those changes have not yet been verified or tested. Qwest has provided no documentation to CLECs for many proposed or recently implemented changes. Approval to provide in-region, interLATA service should be based upon Qwest's demonstrated compliance with the 14 point checklist, not upon promises to comply in the future, nor upon mere statements that it has changed processes and systems to allegedly bring it into compliance. Promises and statements do not equal action or positive results. Until Qwest has taken actions that can be measured and evaluated and shows adequate performance with respect to such measures, Qwest has not demonstrated that it has sufficiently opened its markets to competition as required under Section 271 of the Act.

[2] Eschelon received Qwest's Reply Comments in that matter only very recently and has had little opportunity to review them. For the two days preceding the filing of these Comments (July 30 and 31, 2002), however, Eschelon has participated in a 271 workshop in Arizona during which Qwest first described to Eschelon some of its changes and proposed changes.

I. ABOUT ESCHELON

Eschelon was founded in 1996 and is a rapidly-growing provider of integrated voice, data, and Internet services. The company offers small and medium sized businesses telecommunications and Internet products including local lines, long distance,[3] business telephone systems, DSL, Dedicated T-1 access, network solutions, and Web hosting.[4] Eschelon employs more than 950 telecommunications/Internet professionals and currently provides service to more than 32,000 business customers in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington. Eschelon is certified in Idaho, Nebraska, and New Mexico as well.[5]

Eschelon started out as a reseller but, over the last two and a half years, has built a network to provide facilities-based local exchange service using its own switches and collocations. Eschelon does not own its own fiber; it leases facilities. Eschelon owns and operates switches in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington. In some cases (particularly when a customer is located outside of the area served by Eschelon's switch), Eschelon also orders UNE-P, UNE-E/UNE-Star,[6] or resale from Qwest to serve customers.[7]

Eschelon's target customers are small to medium size businesses. To put Eschelon's business in context, Eschelon serves or has served stores, offices, schools, churches, gymnasiums, libraries, museums, hospitals, clinics, warehouses, jails, florists, pizza delivery shops, restaurants, coffee shops, bail bonds offices, hair salons, automobile services, funeral

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[3] Eschelon is a reseller of the long distance services of a large interexchange carrier ("IXC").
[4] For more information about Eschelon, please visit Eschelon's web site at www.eschelon.com.
[5] Eschelon also provides service to customers in Nevada. Because Nevada is not within Qwest's territory, however, Nevada is not discussed in these Comments. In these Comments, Eschelon provides examples from several of the states in Qwest's territory in which Eschelon operates, not only Utah and Washington. Generally, Qwest uses the same systems and processes across its states.
[6] Regarding UNE-Eschelon ("UNE-E") and UNE-Star, *see* discussion below regarding billing accuracy and reporting.
[7] Eschelon often refers to customers and lines served through Eschelon's own switching facilities as "On-Net" or "On-Switch" and customers and lines served through UNE-E/UNE-Star, UNE-P, or resale as "Off-Net."

homes, and other small to medium businesses. Eschelon's loop customers subscribe to an average of approximately 4 to 5 lines, and Eschelon's T1 customers subscribe to an average of approximately 16 access line equivalents. Eschelon's customers are not located only in the downtown, urban areas. In Utah, for example, Eschelon has customers as far north as Logan, as far south as Provo and Spanish Fork. In Washington, Eschelon has customers in Yakima and Spokane, in addition to Seattle. Looking at maps of Utah and Washington shows that these cities cover a broad area. Eschelon has expanded beyond the larger metropolitan areas. For example, in Oregon, Eschelon is expanding from serving business customers in Portland to serving them in the Eugene and Salem areas as well.

Eschelon is an Interconnect Mediated Access ("IMA")-Graphical User Interface ("GUI") user. Eschelon has engaged a vendor to work with Qwest to implement IMA-Electronic Data Interchange ("EDI"), but that effort is in the early stages.

Qwest has indicated to Eschelon that Eschelon is Qwest's second CLEC wholesale customer.

II. QWEST'S COMMERCIAL PERFORMANCE

Qwest needs to improve its commercial performance in the local market before entering the in-region interlata market. Eschelon raises performance problems with Qwest[8] through avenues such as Qwest's account/service management team[9] and to some extent Qwest's Change

[8] Eschelon has also summarized problems in discovery responses to requests received from state commissions. *See, e.g.,* Exhibits 3 - 4. If Qwest has submitted discovery requests to the commissions asking for copies of discovery responses, Qwest may have also received copies of these documents through those processes.

[9] Each week, Eschelon provides to Qwest a lengthy issues log. Because confidential (customer identifying) information runs throughout the document, Eschelon has not attached a copy of the current issues log as an exhibit. But, Qwest has copies of the logs that it has received each week, including the most recent one. Eschelon personnel also participate in a weekly conference call with Qwest service managers to discuss the performance problems identified in the log and any others that have arisen. As documented in the logs, many resources are devoted to resolving these problems, and delays are common.

Management Process ("CMP").[10] Since January of 2001, Eschelon has also provided to Qwest a monthly "Report Card" summarizing Eschelon's experience with Qwest's performance. In the April 2002 Report Card, for example, of 15 measures, Qwest received an "unsatisfactory" for 10 and a "satisfactory" for five of the measures. *See* Exhibit 5. Eschelon provides these Report Cards, along with backup data,[11] to Qwest monthly, and meets each month with Qwest executives to discuss the results. Over the last six months (November 2001 – April 2002), Qwest met satisfactory performance levels only 38% of the time (35.4% since January of 2001). *See* Exhibit 6.

Some of the commercial performance problems known to Qwest[12] that need to be addressed are described in the enclosed documents and also include:

A. <u>Inadequate Manual Handling and Service Order Inaccuracy</u>

As indicated, the U.S. Department of Justice has recognized that "Qwest does not regularly report performance data on manual order processing or service order accuracy." *See* DOJ Eval. (Qwest I), note 83. Qwest's performance cannot be accurately measured, however, without accounting for these issues. The extent of manual handling of orders at Qwest is very significant. In many situations, Qwest instructs CLECs to select "manual handling" and insert

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[10] *See*, *e.g.*, http://www.qwest.com/wholesale/cmp/changerequest.html and http://www.qwest.com/wholesale/cmp/archive.html (current and archived Eschelon Change Requests).
[11] Because the backup data includes confidential (customer identifying) information, copies have not been attached as Exhibits. Qwest, however, has the copies of each Report Card, with back up data, that it has received each month from Eschelon since January of 2001.
[12] Because Qwest bears the ultimate burden of proof as to its commercial performance on all checklist items even if "no party files comments challenging compliance with a particular requirement," *see In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, at ¶ 47, FCC 99-404 (rel. December 22, 1999) ["FCC BANY Order"], if Qwest has not done so, Qwest should have brought these known issues forward in ongoing proceedings in discussions of Qwest's performance.

remarks as part of the process for placing an order.[13] Although some of these instructions can be found in Qwest's product catalog ("PCAT"), *see id*., many of the situations in which Qwest has told Eschelon that it must use manually handling are not documented on Qwest's wholesale web page. *See, e.g.,* Exhibit 7. Therefore, the documentation does not reflect the extent of the problem. In fact, Qwest's relies heavily on manual handling, and manual handling results in many errors that either adversely affect Eschelon's end user customers or increase Eschelon's costs, or both. As long as Qwest continues to rely on extensive manual handling, an adequate measure is needed. It should be tested for a sufficient period of time and associated with penalties for inadequate performance.

Another huge gap between reality and Qwest's current performance results exists because Qwest's regularly reported installation quality measure does not include troubles that are submitted for missing features or other service order accuracy errors. Feature problems can be as significant of a problem for customers as a loss of dial tone. If hunting is missing from the main line, for example, a business will be able to receive only one call at a time, and other customers calling the business will receive a busy signal. Even worse for many businesses, if the call forwarding/don't answer feature is missing or not working properly, customers of the business will not even get a busy signal; the line will ring with no answer. This makes the business look very bad, as though no one is working during business hours. If a feature that is significant to a customer is missing or does not work properly when that customer switches to a CLEC, the customer will view the transition to a competitive carrier as an adverse experience. The damage

[13] *See*, *e.g*., http://www.qwest.com/wholesale/clecs/migrateconvert.html (instructions for CLEC-to-CLEC conversions state: "The Manual Indicator, field 108a of the LSR form, must equal 'Y'"); http://www.qwest.com/wholesale/ima/gui/faq.html (instructions for how a CLEC issues a change order on a newly converted account when the CSR has not yet been updated state: "Select 'Yes' from the Manual Indicator drop down list on the Remarks Tab in the LSR window").

to the CLEC goes beyond the one transaction and harms the CLEC's reputation and ability to compete.

Qwest claims that it does not measure this type of trouble because it considers the problem to be "an order processing error rather than a provisioning issue." *See* DOJ Eval. (Qwest I), p. 19, note 83. The business customer that is effectively out of business because its features are not working, however, does not care about this fine distinction. To the end-user customer, this is a service affecting trouble. When that end user customer calls Eschelon with the trouble, Eschelon -- unlike Qwest -- records it as a trouble reported within 30 days. Eschelon's practice is more consistent with the OP-5 description than Qwest's own practice, because OP-5 applies to "service affecting" problems. The description for OP-5 specifically requires Qwest to include "***All*** trouble reports (for both out-of-service and ***service affecting*** conditions)." *See* PID Description OP-5 (emphasis added). By its own admission, Qwest nonetheless omits service affecting troubles that it deems to be order processing errors.[14]

In contrast, Eschelon has been including service affecting troubles (including feature problems) in its performance measure for Qwest's new service installation quality. As shown in Exhibit 1, when this key information is included in the measure, the results show the true state of Qwest's performance. For Off-Net orders, for example, Qwest's performance has been above 60% only once in the last 6 months. From December of 2001 through May of 2002, Qwest's performance for new service installation quality for Off-Net orders averaged 49.3%, and the trend is downward. *See id*. This means that, ***more than 50% of the time***, these customers experienced service affecting troubles within 30 days of installation.

[14] This issue also has implications for OP-3. If there is a service order error, Qwest did not meet its commitment ***to provision the order as written*** by the due date.

As this figure shows, including "all" troubles that are "service affecting" in this measure makes a significant difference. Qwest's results show a more positive, but not a true, picture of Qwest's performance. This is ***not*** simply a case of dueling data. It is a situation in which Eschelon does measure service affecting troubles that Qwest has conceded it omits from this measure. Eschelon's regularly reported data including these service affecting issues shows that Qwest has an average of more than 50% troubles within 30 days for Off-Net orders for the last six months. Qwest's retail customers do not regularly experience more than 50% of orders having troubles within 30 days of installation, and Qwest's wholesale customers should not be subjected to this experience either.

Although Qwest claims to be working on measures to address this significant omission in its reporting, those measures are not finalized. They are undeveloped,[15] untried, untested, and unaudited. They are also not associated with any Performance Assurance Plan ("PAP"). Qwest's 271 application should not be approved before adequate measures have been established and tested and are associated with a PAP.

B. UNE-P Provisioning, Documentation, and Ordering Problems

As described in the enclosed Affidavit of F. Lynne Powers, Eschelon moved to another Qwest platform product (UNE-Star) in 2000 after Eschelon found that the problems with Qwest's UNE-P product were too numerous to support a product offering using UNE-P at that

[15] For Qwest's proposed OP-20, Qwest has said that it plans to rely upon a sampling of data (instead of complete data) and that it will not include Universal Service Ordering Codes ("USOCs") in its service orders field comparison. USOCs are a primary driver of accuracy; they dictate the features for the line. Without the inclusion of USOCs, the measure will significantly underestimate the problem, and it will have little value. For Qwest's proposed "augment" to OP-5, Qwest has suggested tracking instances of escalation tickets coming to repair from orders not written properly. If Qwest does not track the number of service orders revised or re-created due to errors, however, the number of errors will be underestimated. Also, Qwest proposes to include all orders in the denominator, instead of manual orders only, while using the number of service order mismatches for the numerator. This will lead to a misleading result. For both of these measures, Qwest has not provided any date by which the measures will be fully developed, and Qwest has not committed to including the measures in any PAP.

time. *See* Exhibit 8. At approximately the same time, McLeodUSA also moved to the UNE-Star product. Therefore, for the bulk of the time since 2000, Qwest does not have commercial performance experience in providing UNE-P to these two reportedly largest CLEC wholesale Qwest customers.[16]

In the past few months, however, Eschelon has started to place UNE-P orders with Qwest again. Qwest UNE-P conversions and migrations are still resulting in the same types of customer-affecting problems that occurred when Eschelon first tried to launch UNE-P in 2000.[17] In May 2002, for example, more than 17%[18] of Eschelon's UNE-P orders (excluding UNE-E/UNE-Star) provisioned by Qwest had Qwest-related trouble reports within 30 days of order completion.[19] The majority of these troubles were Qwest order writer errors or errors on line side translations. As a result of these errors, end-user customers are experiencing outages and feature problems.[20] Recent examples of Qwest-caused customer-affecting problems on new UNE-P orders include:[21]

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[16] Qwest never completed the physical conversion to UNE-E/UNE-Star, and the UNE-E/UNE-Star product suffers from many problems. *See* Exhibit 8. Eschelon has had to begin the process of placing individual LSRs to convert customers to UNE-P, due to billing, provisioning, and pricing issues with UNE-E/UNE-Star. *See id*.

[17] Qwest is aware of these problems. Eschelon described them in 55-page comments filed with the Arizona Corporation Commission on September 21, 2000. *See* Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000) ("Arizona UNE-P Comments"); Verification of Garth Morrisette (same); *see also* Exhibit 2 (comparing problems raised in 2000 with those experienced in 2002).

[18] This is a conservative number. Because of the number of disputes usually associated with No Trouble Founds ("NTF"), Eschelon excluded the NTF troubles when calculating this percentage, to be conservative.

[19] Qwest's reported performance for "UNE-P" cannot be compared to this figure because Qwest has chosen to include the different product of UNE-E/UNE-Star in its UNE-P reporting. *See* below. The more comparable figure is the total percentage of Off-Net (UNE-P and UNE-Star) order installations that have trouble reports within 30 days. In April and May of 2002, for example, ***more than 50%*** of Off-Net order installations had trouble reports within 30 days.

[20] The problems are increased due to inadequate support for resolving issues. The Qwest service managers are so busy that they cannot reasonably handle all of a CLEC's issues. If any one person goes on vacation, the problem becomes more severe. Recently, for example, the Qwest senior service manager for Eschelon went on vacation while a pressing issue involving customer outages was pending. Qwest did not communicate to Eschelon how the issue would be handled in the person's absence. When Eschelon asked the Qwest service manager whether she would handle the issue in her supervisor's absence, she provided a one-word response: "No." *See* Exhibit 9. Only

> **Loss of Dial Tone on All Lines**: Utah UNE-P conversion on 6/12/02 [Customer A: Qwest order # N85575112/D85575111.] This Utah business customer had no dial tone on all lines from at least 8:30am to 12:30 pm during the business day due to a Qwest error in the UNE-P conversion.
>
> **Loss of Dial Tone on Most Lines**: Utah UNE-P conversion on June 24, 2002 [Customer B: Qwest Order # D86456342/N86456343.] This Utah business customer lost dial tone on 9 of 10 lines. The customer was without dial tone from at least 1:40pm to 5pm during the business day due to a Qwest error in the UNE-P conversion.
>
> **Inability to Call Out Locally for Several Days**: Washington UNE-P conversion, July 18, 2002 – July 23, 2002 [Customer C: Qwest Order # C87776397.] This Washington business customer was unable to make local calls for several days, until Qwest finally fixed the Line Class Code, due to a Qwest error in the UNE-P conversion.

The volume of UNE-P orders that Eschelon submits to Qwest is not great. Nonetheless, these customer affecting problems continue to occur.

In addition to submitting new UNE-P orders, Eschelon is currently in the process of migrating some of its customer lines on UNE-Star to UNE-P. Qwest is handling this migration on a project basis, which means that the orders are hand-held in the sense that they are being monitored and handled separately. Despite the project handling of these orders, the migration orders have also resulted in Qwest-caused customer affecting issues. Although the problems occur less frequently for migrations than for new conversions (as would be expected due to the special handling of the migration orders), Eschelon expends substantial resources escalating and resolving these issues. An example follows:

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when Eschelon pressed the issue did she agree to research the issue, and even then she did not commit to a timeframe (such as before her supervisor returns from vacation). *See id*.

[21] The customer affecting UNE-P problems occur across states. In Colorado, for example, a customer was without dial tone from at least 11am until 3:30pm on July 9, 2002 due to a Qwest UNE-P conversion (Escalation ticket # 1409440). Another new UNE-P customer in Colorado lost the hunting capability from May 25, 2002 to May 29, 2002 when converting to Eschelon on UNE-P because Qwest programmed it in the switch incorrectly (Qwest order # N83766414). Another Colorado customer had no stutter dial tone from June 21, 2001 to June 24, 2002 as a result of a faulty UNE-P migration (Qwest Order # C86202822). For Arizona examples, *see* Exhibit 2.

Loss of Features: Washington UNE-P migration, May 7, 2002 – May 13, 2002 [Customer D: PON #UNEPWA2KDI169180.] This Washington business customer had no stutter dial tone for several days. Therefore, the customer had no indication when its customers and other callers had left messages for the business due to a Qwest error in the UNE-P migration.

These customer affecting issues harm Eschelon's business.

Ordering of UNE-P is also unnecessarily difficult, which also harms Eschelon's business by increasing the expense of doing business and increasing the likelihood of errors. In September of 2000, Eschelon described the problems associated with Qwest's process that forces CLECs to individually address every USOC and its status on each UNE-P-POTS order (*see* Exhibit 2), A year and a half later, Qwest has not yet resolved this issue. Qwest continues to require CLECs to address every USOC and its status on each UNE-P order. Although Qwest described its ordering process to Eschelon as "Conversion as Specified" ordering, Z-Tel and WorldCom have recently pointed out in CMP Change Request number SCR060702-1 that this type of ordering is commonly referred to in the industry as "Migrate as is with Changes."[22] In the Change Request, Z-Tel asks Qwest to add the capability to convert customers as specified without having to list and map changes, adds or removes. Z-Tel points out that SBC, Verizon, and BellSouth all provide this pure migrate as specified capability for UNE-P customers. As this Change Request shows, Qwest has not yet resolved the issue raised by Eschelon in 2000.

In addition to customer-affecting service and ordering issues, availability and documentation of the features and functions of UNE-P are issues with Qwest's UNE-P product. As compared to the almost non-existent UNE-P documentation on feature availability in 2000, Qwest has added much more information to its web page regarding features and UNE-P. Issues remain, however. For example, Qwest continues to deny access to Remote Access Forwarding with UNE-P, even though it is a switch feature and Qwest previously testified that switch features would be available with UNE-P, regardless of whether Qwest moved the feature to an Advanced Intelligent Network ("AIN") platform for its own use (*see* below). Nortel Technical Publication (NTP) 297-8021-350, Standard 13.02, clearly shows that Remote Access Forwarding is a standard switch feature for the DMS switch.

In March of 2002, Eschelon again pointed out to Qwest that Remote Access Forwarding is a switch feature so the capability should be available with UNE-P. (Eschelon's reference at the time to the Nortel documentation showing that the feature is in the switch clearly showed that Eschelon was requesting the capability of the switch.) Qwest again refused Eschelon's request and confirmed that it will not make Remote Access Forwarding available with UNE-P because Qwest categorizes it as an AIN feature. Qwest currently includes Remote Access Forwarding (AFD/AFM) on its list of "Features, Products, & Services Unavailable with UNE-P Products."[23] On this issue, Karen Stewart of Qwest previously responded to a comment by Michael Beach of WorldCom in testimony as follows:

> MR. BEACH: You see my concern. I assume that to the extent that you have features available to retail customers using AIN and they become more available on AIN but less available on the switch then they become less available to competitors.
>
> MS. STEWART: No, they would be available to you on the switch because you can still get any technically feasible functionality at the switch.
> So, let's just take an extreme. If Qwest was to decide to do no call forwarding with its local switch, none, and moved all call forwarding to an AIN platform, a CLEC purchaser could still choose to use all the call forwarding capability of that central office

[22] *See* http://www.qwest.com/wholesale/cmp/changerequest.html.
[23] *See* http://www.qwest.com/wholesale/pcat/unep.html (click on "UNE-P Features Not Available" under "Optional Features" for UNE-P general information; no link to document by specific UNE-P product).

> switch. It's not going to take anything away from you and your options to use the switch because you still get all of that feature functionality that that switch is capable of.[24]

Despite Qwest's paper commitment to provide the capabilities of the switch even when Qwest also moves such functionality to an AIN platform for itself, Qwest continues to deny access to the Remote Access Forwarding switch feature with UNE-P. Although Eschelon has raised this issue for a year and a half, Qwest could not tell Eschelon at the July 30-31, 2002 Arizona 271 workshop whether this feature is activated in any of its switches. It claimed that it has a process in place to make switch feature capability available and added that there may be some costs associated with it. If so, none of the many individuals at Qwest with whom Eschelon has dealt on this matter for a long period of time are trained on the process. They have not made it available to Eschelon.

With respect to feature availability generally, Qwest now has documentation on its web page but there are still gaps and inconsistencies. Clearly documented feature information is critical to developing and marketing a product. Eschelon requested a complete list of AIN features from Qwest. Qwest now provides a list of "UNE-P Features Not Available," but that list does not identify which features are unavailable because Qwest claims they are AIN features. The Qwest "UNE-P Features Not Available" List states that it includes Voice Messaging and AIN services that are not available with UNE-P. The list also includes features that do not fall in to either of these categories (such as feature packages).[25] The only feature on Qwest's list that is

[24] Transcript, Vol. I, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Corporation Commission Docket No. T-00000A-97-0238 (Workshop 4, Checklist Items 2, 5, and 6), p. 82 line 12 – p. 83 line 4 (Oct. 10, 2000).
[25] Although some packages are listed, others (such as PGOCL) are not. The title of the document ("Features, Products & Services Unavailable with UNE-P Products") suggests that the list is more comprehensive than it is, which has led to confusion.

specifically identified as "AIN" is "No Solicitation" (SB5).[26] For other features, the basis for unavailability is not provided. It is important to know the basis for Qwest's claim of unavailability. As the example of Remote Access Forwarding shows, a CLEC familiar with the functionalities of a switch cannot plan its product based on that knowledge, because Qwest may refuse to provide such functionality on the grounds that Qwest claims it is an AIN feature. Qwest needs to identify when this is the basis for its refusal to provide access.

Although Qwest now posts feature information on its web site in its product catalog (PCAT), inconsistencies and gaps remain. For example, Eschelon had to point out to Qwest that Qwest's "UNE-P Features Not Available" List showed that message waiting was not available with UNE-P when it should be available, and this prompted Qwest to change the documentation. With respect to Universal Service Ordering Codes ("USOCs"), Qwest instructs CLEC UNE-P providers to use IMA GUI to verify if a feature is available in each market. Without the correct USOC, however, the CLEC cannot do so. Eschelon asked Qwest on several occasions for a list of the available USOCs by market. Qwest provided a list to Eschelon on May 17, 2002. When Eschelon compares that list to Qwest's "UNE-P Features Not Available" List on Qwest's website, the two Qwest documents do not reflect the same information. For example, Qwest's May 17, 2002 USOC list states that ENT, FLT, and NL1 are available with UNE-P, but Qwest's "UNE-P Features Not Available" List shows that they are unavailable. Also, although Qwest has provided conflicting information with respect to Scan Alert, Qwest has most recently indicated that Scan Alert is available with UNE-P-POTS. Scan Alert is not listed, however, on Qwest's web site as a feature available with UNE-P-POTS. Conversely, Qwest has told Eschelon that

[26] *See* http://www.qwest.com/wholesale/pcat/unep.html (click on "UNE-P Features Not Available") (*compare* Remote Access Forwarding, which has no designation, *with* No Solicitation (SB5), which is designated as "AIN" on the list).

Market Expansion Line (RCFVF, RCFVE) is unavailable with UNE-P, but Market Expansion Line is not included in Qwest's list of "Features, Products & Services Unavailable with UNE-P Products." The effort to track down and verify information USOC by USOC is resource intensive and it adversely affects the CLEC's ability to efficiently design and offer a full range of products.

C. Release 10.0 Change Preventing CLEC-to-CLEC Orders

Qwest has a documented process regarding how to submit CLEC-to-CLEC orders electronically.[27] After the 10.0 Release on June 17, 2002, however, Eschelon could not submit electronically CLEC-to-CLEC orders following that documented process, or at all when the circuit identification numbers were not populated in IMA. When trying to do so, Eschelon received various error messages (such as cannot find Customer Service Record, "CSR"). The error messages were up-front edits, so Eschelon was not allowed to proceed with the order. Eschelon was not informed in advance of any change in Release 10.0 that should have caused this result. When Qwest makes changes that affect CLECs, however, the documented process requires advance notice to CLECs. Qwest told Eschelon that a third party system change caused the problem due to edits in one system that were not in the other. The practical problem confronting Eschelon and other CLECs was that due dates provided to end-user customers could be missed because Qwest's Release prevented CLECs from relying on the documented process and placing CLEC-to-CLEC orders.

Eschelon submitted its first ticket with Qwest regarding this issue on June 21, 2002. Eschelon escalated the issue to its Qwest senior service manager and a Qwest process specialist,

[27] *See* http://www.qwest.com/wholesale/clecs/migrateconvert.html; and http://www.qwest.com/wholesale/ima/gui/faq.html as of July 2, 2002.

but they became unavailable while the issue remained unresolved. Several days went by with no update from Qwest. This failure to provide status updates violated the CMP production support process that is supposed to be in place. On July 1, 2002, Eschelon asked Qwest to correct the problem in IMA-GUI by the end of the day. Qwest did not correct the problem. On July 2, 2002, Qwest distributed an Event Notification (for Ticket Number 5970408) that said: "Work Around: IMA will remove the edit for AN placeholder of 000-000-0000-000 being invalid. Until fix is in place the LSR should be manually submitted. See URL: www.qwest.com/wholesale/clecs/escalations.html for contact information and/or faxing in your request." Eschelon does not know why Qwest waited until July 2, 2002, to distribute an event notification related to this issue, when Eschelon and Allegiance Telecom both submitted tickets on June 21, 2002. Eschelon informed Qwest that the work around identified in the event notification was unacceptable to Eschelon. Manually faxing orders to Qwest would introduce the increased likelihood of error and all of the other problems associated with faxes. Eschelon also told Qwest that the ticket severity level should appropriately be level 1, not level 3. The severity level affects the status notification intervals and other procedures that should have been, but were not, applied in this situation. Although the particular change preventing CLEC-to-CLEC orders has been corrected, the process non-compliance issue remains a concern.

Also, the experience with Release 10.0 is not an isolated example. Eschelon's experience in dealing with releases, point releases, and patches is that it does not appear that the process and systems personnel at Qwest are coordinating sufficiently to determine the impact of system changes on existing Qwest processes. Qwest's research into the impact on manual processes is insufficient, because the systems changes have unexpected consequences. Eschelon then has to experience and report the problem and deal with the adverse impacts instead of avoiding the problem upfront.

D. <u>OSS – Lack of Flow Through</u>

On June 26, 2002, Qwest confirmed to Eschelon that any telephone number coming from a 1FB with CCMS, Centrex 21, Centrex or Centron for conversion to UNE-P or Resale POTS will not flow through. The orders will fall out of IMA for manual handling. In addition, the orders do not flow through the switch. They fall out for manual handling of Qwest switch translations. While the "disconnect" portion of the order flows through, the "new translation" falls out, which places the customer out of service. Eschelon end-user customers have been out of service for several hours until translations is worked or Eschelon opens a ticket to have the translations worked. Eschelon previously asked Qwest to provide true flow through for UNE-P and resale orders (*see* Change Request #SCR100201-1), but Qwest closed that Change Request with a status of "completed." Eschelon now believes that this was erroneous, because these orders do not truly flow through. Given the amount of "exceptions" listed on Qwest's flow through eligible chart, there are very few order types that flow through.

E. <u>OSS – Cumbersome GUI</u>

Eschelon recently participated in a Qwest-initiated conference call regarding Qwest's GUI. Eschelon uses the IMA-GUI to place its orders with Qwest. Qwest indicated that a third party tester had suggested that the GUI was cumbersome. Eschelon agreed with the tester. Although time for review and response was short, Eschelon identified at least eight areas in which the GUI could be improved. At Qwest's request, Eschelon submitted eight Change

Requests to the Qwest CMP relating to these changes.[28] Eschelon will not know whether Qwest will make the changes until the Change Requests are processed.

Even assuming all of those changes are made, the GUI process will remain cumbersome as long as it continues to rely on so many manual processes. In many situations, Qwest instructs CLECs to select "manual handling" and insert remarks as part of the process for placing an order.[29]

F. UNE-P and Resale Customers Affected by Unannounced Dispatches

Eschelon asked Qwest to investigate potential non-compliance with CMP procedures with respect to a project first described by Qwest to Eschelon as a project to increase copper availability and to report the results of that investigation to CLECs.[30] *See* Exhibit 10. Eschelon described how Qwest has failed to coordinate its project adequately with CLECs to avoid service disruptions. Eschelon first learned of this situation in the context of its migration of existing customer lines to UNE-P, but the problem also occurs with conversions of new customers to CLECs using UNE-P and resale. For orders that do not otherwise generally require a dispatch (such as conversions and reuse of facilities), Qwest nonetheless dispatches a technician to change cable and pair. If Qwest apprised Eschelon of its plan to do so, Eschelon could coordinate with Qwest and set end-user customer expectations. Qwest has not done that. At a minimum, this causes customer confusion, because Eschelon has told the customer that no technician would be needed. Instead of the expected seamless conversion, a Qwest technician appears and tells Eschelon's customer that the technician is going to take down the customer's service. This is

[28] *See* http://www.qwest.com/wholesale/cmp/changerequest.html (SCR062702-02, SCR062702-03, SCR062702-04, SCR062702-05, SCR062702-07, SCR062702-08, SCR062702-09, SCR062702-10).
[29] *See*, *e.g.*, note to Section A relating to manual handling order instructions.
[30] Similarly, Eschelon has asked Qwest to investigate apparent non-compliance with the CMP process with respect to a "Coppermax" project instituted by Qwest. *See* Exhibit 10.

disconcerting enough for the customer. If something goes wrong, the disruption may also be prolonged. In addition, depending on the work performed by Qwest, customer premise equipment could be affected (analog versus digital, modems, equipment settings, *etc*.). Notification and coordination are needed to address these issues.

On July 2, 2002, for example, a Colorado customer was supposed to convert to Eschelon. The order required no dispatch. But, a Qwest technician nonetheless arrived and changed a cable and pair. The Qwest technician failed to complete the cross connect at the demarcation. Therefore, the end-user customer – an insurance company – suddenly found that it could make no calls on a business day shortly before a holiday weekend. As of the afternoon of July 3, 2002, the customer could still make no calls. Qwest told Eschelon that it had tagged the lines at the demarcation, so Eschelon could dispatch a technician to fix the problem. Although Qwest created the service disruption, Eschelon went ahead and dispatched a technician to get the customer back in service. This should have been Qwest's responsibility.

When Qwest begins a project such as the project to increase copper availability, Qwest should provide adequate notice to CLECs and coordinate with them to avoid service disruptions. Also, Qwest should not be able to impose extra work and costs on CLECs to complete and correct work that Qwest is performing on its own. The orders placed by Eschelon did not require technical work, but Eschelon has nonetheless had to dispatch technicians or otherwise resolve these issues.

Regarding the magnitude of the problem and all geographic areas in which it is occurring, Eschelon will not necessarily know of all of the instances when this occurs. While a Qwest dispatch may surprise and displease a customer, the customer may choose not to call Eschelon. Then, Eschelon does not even have an opportunity to explain the problem.

Although Qwest has not yet provided a response to Eschelon to its inquiry through the CMP, Qwest claimed at the 271 workshop in Arizona on July 30-31, 2002 that Qwest has addressed this problem. *See also* Qwest's Reply Comments in Qwest I, p. 47 (July 29, 2002). Before Eschelon and other CLECs can be assured that the problem is resolved, however, Qwest must demonstrate through performance that the problem is corrected. The fact that a promise is no substitute for results is shown by the conflicting information Qwest provided to Eschelon on this issue, consisting of at least three versions of events:

> Version 1: Initially (before Eschelon's Qwest I FCC Comments) Qwest service management told Eschelon that Qwest was working on a Qwest copper availability project that required Qwest technicians to go to Eschelon's end-user premises. When Eschelon indicated that it appeared that Qwest was dispatching technicians on Eschelon orders that were supposed to require no dispatch, Qwest denied a relationship between Eschelon's orders and the dispatches.
>
> Version 2: At the Arizona 271 workshop on July 30-31, 2002, Qwest states that there is no copper availability project. Qwest testifies that it was able to confirm at least 5 erroneous dispatches, and they were associated with Eschelon's orders. It indicated that, because it was able to so identify the issue, it was also able to institute changes to correct the problem.
>
> Version 3: After the workshop, Eschelon reads in Qwest's July 29, 2002 Qwest I Reply Comments (p. 47) that "Qwest's research shows that a technician was not dispatched on the five occasions Eschelon cites." Nonetheless, Qwest instituted modifications that are supposed to eliminate unnecessary dispatches. *See id.*

While Eschelon hopes that Qwest has resolved the particular dispatch problems involved in these examples, the conflicting and confusing information provided by Qwest on this issue has not inspired confidence. In addition to addressing the particular unnecessary dispatches that occurred in this scenario (under any of the versions), the issue of unannounced dispatches generally should be addressed. In the particular examples addressed by Qwest, the dispatches may have been erroneous. In some cases, Qwest may claim that it needs to make legitimate visits to a CLEC's end-user customer premises for routine maintenance or other non-emergency reason. The CLEC is the owner of such facilities, and it needs to be aware of such activities. In such cases, Qwest should have a documented process to ensure that proper procedures are followed regarding notice, branding, and coordination with the CLEC to allow the CLEC to set end-user customer expectations and to avoid the types of problems described above.

G. DSL – Repair

According to Qwest's documentation, Qwest Digital Subscriber Line ("DSL") is available at retail rates with UNE-P, including UNE-P-Centrex (and Centron). *See*, *e.g.*, http://www.qwest.com/wholesale/pcat/unepcentrex.html ("You may convert existing Qwest Digital Subscriber Line (DSL) to UNE-P Centrex with Qwest DSL service. You may also request the installation of new Qwest DSL service on an eligible and existing UNE-P Centrex, subject to loop qualification and availability.") Nonetheless, Qwest is not fully prepared to deal with DSL repair issues. Qwest has said it does not have back end system records containing the DSL technical information needed for repair of Centron/Centrex Plus lines with DSL. On June 5, 2002, Qwest confirmed this to Eschelon. Qwest said that, when the service order is processed, the critical technical DSL information needed for repair drops off and does not populate in the Qwest back end systems. Qwest said this information is lost and cannot be retrieved. Qwest also said that this problem occurs in Qwest's Eastern and Central billing regions. Those regions include Utah, as well as Arizona, Minnesota, and Colorado, of Eschelon's states.[31]

Due to this problem, when Eschelon calls the Qwest repair centers (general repair or DSL repair), the Qwest representative will have no repair record with the information needed to repair

[31] This issue is of particular concern to Eschelon in Colorado and Minnesota, because of Eschelon's significant number of existing Centrex Plus/Centron lines in those states. If Eschelon or any CLEC desires to order Centrex products in Utah, however, they will be confronted with this problem.

a trouble in the DSL portion of the line. The Qwest representative may not even know that the customer has DSL. At a minimum, the customer will experience delays, and Eschelon will have to expend resources on escalating and resolving the problem, if it can be resolved. The DSL may have to be re-installed, because the technical information about the existing DSL service is lost. Qwest has asked Eschelon to provide additional forecasting and conduct additional monitoring of repair issues because of this problem. This imposes extra resource burdens on Eschelon. More importantly, Eschelon's end-user customers will be adversely affected.

In addition, Qwest confirmed at a recent CMP meeting that Qwest retail does not have this problem. Therefore, this is also an example of discrimination.

H. DSL – Delay When Qwest Disconnects in Error

When Eschelon converts a customer from Qwest to Eschelon, Qwest at times has disconnected the customer's DSL in error. For example, the Customer Service Record ("CSR") may be inaccurate and show the DSL on the wrong line. Although the error is Qwest's error, Qwest has said that its policy is to provide the CLEC the standard interval before Qwest will restore the DSL to the end-user customer.[32] Therefore, the CLEC's end-user customers have had to wait days for their DSL service to be restored, when it never should have been disrupted. If Qwest disconnects the DSL service of one of its retail customers in error, Qwest retail is unlikely to tell the customer that Qwest's policy is to make the customer wait for days to restore the customer's DSL service or to take days for service to be restored.

[32] Qwest's service management for Eschelon told Eschelon that this was Qwest's policy, which is consistent with Eschelon's experience. Very recently, Qwest has now indicated that this is not Qwest's policy. Although the time to restore in these cases is decreasing and may be less than the full interval, it still has taken days to restore when Qwest disconnects in error.

I. DSL – Qwest Disconnects DSL Early (Before Voice)

When Eschelon converts a customer from Qwest to Eschelon, Qwest virtually always disconnects the customer's DSL early. For example, Eschelon submits an order for UNE-P with DSL and indicates the due date. Qwest then disconnects the DSL before the due date. The customer still has voice service but loses DSL service. Some business customers rely heavily on DSL service, and a disruption in DSL service can be as important or more important than a disruption in voice service. This situation not only causes the end-user customer to lose its DSL service and become frustrated, but also causes additional work for both carriers. It also causes customer confusion because the customer believes that it has changed to a new provider. In fact, the customer is still a customer of Qwest's because the DSL was disconnected before the due date for the conversion to the CLEC. This leads to a frustrating and unsatisfactory experience for the customer, which may blame the CLEC even though Qwest disconnected the DSL early. Eschelon previously encountered a similar problem at Qwest when Qwest would take down the customer's voice mail early (before the due date for the voice service). Although the voice mail problem has since been resolved, the DSL problem appears similar and causes similar headaches.

J. DSL - Migration of Customers

Qwest has no process to migrate an existing CLEC customer (*e.g.*, on resale or UNE-Star) with DSL to UNE-P without bringing the DSL service down. When Eschelon attempted to move existing customers with DSL to UNE-P, as it is entitled to do under its interconnection agreements, the DSL service went down. DSL service is important to end-user customers and, when moving from one form of service to another, the transition should be seamless to the end-user customer. Eschelon has had to postpone its plan to move existing customers with DSL to UNE-P until Qwest develops and implements a process that does not have this adverse impact to the end-user. In the meantime, although Eschelon is entitled to the lower rates available with UNE-P, Qwest continues to bill Eschelon at higher rates, even though Eschelon is prepared to move the customers now. Qwest has not provided a date when a process will be in place.

K. Maintenance & Repair – Discrimination

When Qwest provides repair services to its retail customers, Qwest provides a statement of time and materials and applicable charges to the customer at the time the work is completed. When Qwest provides repair services to its CLEC wholesale customers, however, Qwest does not do so. Despite Eschelon's requests that Qwest provide this information to CLECs,[33] Qwest does not provide needed information until the monthly wholesale invoices arrive at a much later point in time. This places CLECs at a disadvantage. CLECs cannot dispute a charge at the time the work is completed, when all of those involved are most likely to know the facts necessary to determine the accuracy of the charge. CLECs must wait until the bill is received, and then it is a huge task to analyze after the fact what happened in each situation and whether a charge should have been applied.

L. Maintenance & Repair – Branding and Customer Confusion

Although Qwest has refused to provide CLECs with a statement when work is completed, Qwest nonetheless has at times left such Qwest statements with Eschelon's end-user customers

[33] *See*, *e.g.*, http://www.qwest.com/wholesale/downloads/2001/011221/122101email.pdf, p. 13 of 21 ("More information on the bill is only a part of the request made by Allegiance, Covad, and Eschelon in their joint Escalation. With respect to billing, we also asked Qwest to 'Ensure that CLECs receive notification, at the time of the activity, if a charge will be applied, because CLECs should not have to wait until the bill arrives to discover that Qwest charged for an activity.' (Joint Suppl. Escalation, p. 9.) As Eschelon said at the most recent CMP meeting, the CLEC needs to know at the time of the event that a charge will apply. Immediately after the work is completed, Qwest needs to send CLEC a statement of services performed, testing results, and applicable charges (by telephone number) that will appear on CLEC's next invoice. If Qwest is claiming that a charge was authorized, a process should also be in place to provide timely documentation as to who authorized the charge. If CLECs must wait until the bill is received, it will be a huge task to go back and analyze what happened in each situation and whether a charge should have been applied. All of these kinds of issues should be discussed and reviewed jointly before implementation.").

in Arizona and Washington. Eschelon has examples of this again this month. Eschelon provides such examples to its service manager. In a typical situation that occurred this month, Qwest provided a US West-branded statement of time and materials to Eschelon's end-user customer and required Eschelon's customer to sign it. The Qwest Wholesale web site,[34] under Branding, states: "Qwest technicians will use unbranded maintenance and repair forms while interfacing with your end-users. Upon request from you, Qwest will use branded repair forms provided by you. Qwest technicians will not discuss your products and services with your end-users. Such inquiries will be redirected to you." This language does not reflect reality. These situations cause customer confusion, as well as additional work for Eschelon in clarifying the issue with customers and resolving the issues with Qwest.

M. <u>Maintenance & Repair – Untimeliness of Bills</u>

The problem of not receiving a statement when work is completed is compounded by the problem of untimely bills for maintenance charges. Eschelon's Utah bill for November 2001 contained charges going back to July, August, September and October of 2001. Eschelon's Utah bill for December 2001 contained charges going back to September, October and November of 2001. Eschelon's Utah bill for January 2002 contained charges going back to November and December of 2001. Eschelon's Utah bill for February 2002 contained maintenance charges going back to December 2001 and January of 2002. Eschelon's Washington bill for December 2001 contained charges going back to October and November of 2001. Eschelon's other recent Washington bills have contained charges going back for about a month.[35] Eschelon is entitled to

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[34] *See* http://www.qwest.com/wholesale/clecs/maintenance.html.

[35] The problem occurs in other states as well. For example, Eschelon's Colorado bill for November 2001 contained charges going back to August and September of 2001. Eschelon's Colorado bill for December 2001 contained charges going back to September of 2001. Eschelon's Colorado bill for January 2002 contained charges going back

timely bills pursuant to its interconnection agreements. *See* Qwest-Eschelon Interconnection Agreements, WA Att. 5, ¶ 4.3.6 ("current bill") & UT Att. 5, 4.3.6 (same). Also, bill verification becomes virtually impossible when dealing with such outdated information.

N. Maintenance & Repair – Insufficient Information on Bills

The problems of not receiving a statement when work is completed and untimeliness of bills are compounded further by the lack of sufficient information on Qwest's invoices. For unbundled loops, Qwest has not included circuit identification information in Eschelon's bills for maintenance and repair charges. This is true even though Qwest requires Eschelon to submit the repair ticket containing the circuit identification. The bill also does not include the date of the dispatch or trouble repair. Instead, Qwest provides the date on which Qwest writes the order to initiate the charge on the bill, which could even occur in a different month. If Eschelon has multiple tickets for the same circuit identification number, the bill does not provide sufficient information from which Eschelon may identify the ticket to which the charge applies. In Washington and Oregon, Qwest does not provide the Universal Service Ordering Code ("USOC") for the charge. Although Qwest claims to have a high billing accuracy rate, Qwest could not show it using the information it provides to Eschelon. Eschelon believes that circumstances exist when Qwest charges Eschelon although it should not do so, but the insufficient and untimely information provided by Qwest prevents Eschelon from being able to establish this in many cases. As discussed above with respect to receiving a statement when work is completed, Eschelon should be able to inquire about a charge at the time the work is

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to September, October, and December of 2001. Eschelon's Colorado bill for February 2002 contained maintenance charges going back to October and November of 2001.

performed, when the facts are known, and should not have to bear the burden and expense of trying to decipher Qwest's bills much later.

O. Maintenance & Repair – Authorization and Accuracy for Closing Tickets

Eschelon has complained to Qwest that Qwest at times closes tickets without calling Eschelon for authorization. In situations in Utah and Washington in which this has occurred, Eschelon has had to re-open tickets because, although Qwest closed the ticket (without authorization), the trouble was not resolved. The initial tickets should have remained open until the trouble was resolved. Eschelon has also pointed out that Qwest closes tickets in some cases with the incorrect cause and disposition codes. This not only affects repair but may also affect billing.

P. Maintenance and Repair – Pair Gain/Testing

Over Eschelon's objections to the process used to do so, Qwest instituted an additional or "optional" testing policy and rates.[36] Qwest said that it will either reject a trouble ticket or offer to test for CLECs when a CLEC does not conduct testing of loops before submitting a trouble ticket. Although Eschelon has not opted in to any SGAT containing language to this effect, Eschelon does conduct testing before submitting trouble reports. When Qwest uses pair gain (IDLC), however, Eschelon cannot obtain accurate testing results. Because Eschelon cannot do so, pursuant to Qwest's policy, Qwest will charge Eschelon the so-called "optional" testing charge (which does not appear in all of Eschelon's interconnection agreements). Qwest may also dispatch because Qwest cannot remotely test either and charge Eschelon a dispatch charge. If the trouble is not in Qwest's network, Qwest will bill Eschelon not only a testing charge and a

[36] *See* http://www.qwest.com/wholesale/downloads/2001/011221/122101email.pdf.

dispatch charge, but also a No Trouble Found charge. Eschelon should not be incurring all of these charges when the inability to provide accurate test results is due to Qwest's use of pair gain.

On Qwest's web page, under the heading of Maintenance and Repair,[37] Qwest states: "Trouble isolation and testing is a joint process. You are responsible for testing and providing trouble isolation results prior to submitting a trouble report to Qwest. If you elect not to perform trouble isolation testing, Qwest will offer you the option of performing the testing on your behalf." Qwest also lists on that web page, as "Examples of acceptable test results" that "You report: "Pair Gain," you need to relay the actual test results." When Eschelon reports "pair gain" as a result, however, Qwest has refused to open a repair ticket unless Eschelon authorizes the "Optional Testing Charges." If the language on the web page means that "pair gain" is an acceptable test result, as it appears to Eschelon, Qwest is not complying with its documented process in these cases.

On July 9, 2002, Eschelon gave test results to Qwest, following the above instructions on the web site, for an issue in Utah. Although Eschelon followed the documented Qwest process, the Qwest technician refused to work the ticket (#SC295619) unless Eschelon authorized the "Optional" testing charge.

Q. <u>Maintenance and Repair – Reciprocity</u>

Qwest told Eschelon that, although Qwest will charge Eschelon for testing-related charges, Qwest will not accept charges from Eschelon for testing that Eschelon conducts for

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[37] *See* http://www.qwest.com/wholesale/pcat/unloop.html.

Qwest in the same circumstances. Qwest's policy in this regard gives Qwest an advantage over every other carrier that must pay charges in these situations.

R. Loss and Completion Reports

Qwest retail has a competitive advantage over wholesale customers, because Qwest retail and not Qwest wholesale receives accurate customer loss information. A primary problem with the Loss and Completion Reports is that the reports do not provide CLECs with the intended ability to identify which customers have left the CLEC for another carrier. This is a significant issue that adversely affects the CLEC's reputation and the end-user customer. If Eschelon cannot determine that a customer has left (a "loss"), Eschelon continues to bill the customer. Eschelon cannot send a closing bill and settle the account. Doing so later significantly decreases the likelihood of full collection. Eschelon and other CLECs are made to look bad with the customer, who does not understand why a carrier would not know that the customer has left. Eschelon has invested significant amount of time into attempting to improve the Loss and Completion reports and has obtained improvements. Additional issues remain, however. Eschelon has asked that only losses appear on the loss report (rather than including all orders submitted on the report). Qwest has agreed to add a column to the loss report to indicate whether the loss is internal to the CLEC or external. This change has not yet been made, however. The loss report is also only as accurate as the typist who manually enters the USOC or FID. Manual entry is still required on the service order to transmit information to the loss report. In addition, the information on the loss report also appears on the completion report but, due to errors and different criteria for the reports, the information may not appear on the Loss and Completion Reports for the same conversion on the same day. The loss may appear in the loss report one day, and the completion for the same customer may appear in the completion report on another day.

S. Inadequate Notice of Rate and Profile Changes

Qwest denied Eschelon's escalation regarding advance notice of rate and profile changes, although it incorporated some of Eschelon's proposals.[38] Eschelon was able to obtain some additional information regarding rate changes, but the information provided by Qwest is still inadequate. For example, whereas Eschelon asked Qwest to provide the previously billed rate and the new rate, to facilitate bill verification, Qwest provides general information, such as a reference to a discount change without enough information to easily identify the impact on the bills.[39] When Qwest discovers a claimed error or when Qwest changes a rate, Qwest sends a general, high level notification to all CLECs. It provides some detail of the changes to the CLEC in a spreadsheet. Qwest populates the spreadsheet with all of the USOCs that Qwest indicates the CLEC is allowed to order under the Interconnection Agreement. Eschelon has asked Qwest to provide, on the spreadsheet, which USOCs Eschelon orders. This is necessary because of the manner in which Qwest is sending its notices. For example, in February of 2002, Qwest sent Eschelon a spreadsheet that included more than 3,000 USOCs, only one of which Eschelon was currently using. Researching each USOC to determine what Qwest said it had incorrectly billed and the impact to Eschelon's invoices is a labor-intensive, time-consuming task. This task would have been completely unnecessary if Qwest had simply provided meaningful notice to Eschelon

[38] *See* http://www.qwest.com/wholesale/downloads/2002/020214/CLEC_Response013102.pdf and Qwest responses on same web page.

[39] Qwest provides to CLECs either 1 minus discount (ending with a percentage) or a tariffed rate, rather than the rate less the discount percent that appears on the invoice. To ensure meaningful notice of rate changes, Eschelon has asked Qwest to supply the actual incorrect rate (dollar amount) and the actual correct rate (dollar amount). For example, if Qwest bills Eschelon $10.00 for a line and then the rate to be billed to Eschelon changes to $9.00, the notification should show $10.00 as the existing rate and $9.00 as the new rate.

of the proposed rate change to the one USOC used by Eschelon. Qwest also rejected Eschelon's proposals for presenting the rate and alleged errors as ***proposed*** changes. Qwest notifies CLECs of changes, which CLECs must then challenge after the fact (if they are provided with enough information to do so and receive the notification before Qwest implements the correction).

Although rate changes may seem straight forward, CLECs cannot necessarily predict when Qwest believes a rate has changed. For example, Eschelon first raised the issue of notice of rate and profile changes when Qwest, without Eschelon's knowledge, conducted a "scrub" of the interconnection agreements. Pursuant to that "scrub" (a term used by Qwest at the time), Qwest deleted a USOC in Eschelon's profile because Qwest unilaterally determined that Eschelon did not have a certain type of loop installation in its interconnection agreement (*i.e.*, the interconnection agreement did not include the rate sought by Qwest). Although Eschelon ultimately persuaded Qwest that Eschelon's interconnection agreement did include this type of loop installation, Qwest deprived Eschelon of the opportunity to raise this issue in advance of the profile change. Qwest actually started rejecting Eschelon's orders for loops and then Eschelon had to escalate to get the orders re-started. This happened in at least three states (Utah, Minnesota, and Arizona). Although Eschelon hopes that this particular issue will not arise again, this example highlights the problem created if Qwest may merely notify CLECs of a rate or profile change after the fact instead of involving the CLEC such decisions. Qwest's current policy of notifying CLECs of changes instead of attempting to gain CLEC agreement, as proposed by Eschelon, applies in Montana, Utah, Washington, and Wyoming, as well as Qwest's other states.[40]

[40] *See* http://www.qwest.com/wholesale/cmp/escalations.html (Qwest responses).

T. Policy of Applying Rates not in Eschelon's Interconnection Agreements

Qwest has a policy of applying rates from Qwest's Statement of Generally Available Terms ("SGATs") even when those rates have not been approved by a state commission (as opposed to simply being allowed to go into effect) and a CLEC has not opted in to the SGAT. Eschelon has not opted in to any SGAT. Nonetheless, in an email dated June 11, 2002 to Eschelon, the Qwest sales representative for Eschelon said, for example:

> "With respect to the rate discussion, Qwest's position has not changed. We will be billing Commission ordered rates, where they exist. If they don't exist, we'll be billing rates in your contract, if they exist for the type of installation we are doing and if there are no contractual rates, we will bill SGAT rates."

Because Eschelon has not opted in to any SGAT, Qwest should not apply these charges to Eschelon. Nonetheless, Qwest does charge some SGAT rates to Eschelon, even after Eschelon has objected to such charges. In some cases, the charge should be zero. For example, Qwest should not be able to charge Eschelon for features in states in which the features are included in the switch port price, regardless of whether Qwest has proposed feature rates in its SGAT. In other cases, if a charge is due and really is not in the interconnection agreement, Qwest should negotiate a rate, obtain commission approval for a rate, or at least reach agreement on using the commission approved cost models and processes to calculate the rate.[41] Qwest should not be able to simply select a rate and apply it unilaterally. In Minnesota, the Public Utilities Commission ("MPUC") recently voted to adopt (with some modification) the Findings of Fact, Conclusions of Law, and Recommendation of the Administrative Law Judge in *In the Matter of Onvoy Inc.'s Complaint Against Qwest and Request for Expedited Hearing* ("*Onvoy*

[41] The fact that no commission has universally accepted all of Qwest's proposed SGAT rates suggests that not every SGAT rate is based on a cost-based, commission approved methodology, even though Qwest labels the rates as allegedly being "TELRIC."

Complaint"), MPUC Docket No. P-421/C-01-1896 (April 12, 2002). Onvoy filed a successful complaint against Qwest regarding the manner in which Qwest proposed to true up its charges for caged and cageless collocation. In calculating the true-up, Qwest used its own prices. The MPUC found that Qwest should have used the AT&T/MCI HAI model previously adopted by the MPUC in the first cost case, even though that model had to be adjusted or used as an approximation to calculate the particular rate. *See* Order Resolving Complaint, Setting Collocation Prices, and Setting Procedural Schedule, *Onvoy Complaint*, MPUC Docket No. P-421/C-01-1896, p. 4 (July 3, 2002). CLECs should not have to establish which model applies every time a rate is needed. *See id*. ("Qwest's request is impractical."). Pursuant to its policy of applying SGAT rates when Qwest unilaterally interprets a contract to not include a rate, however, Qwest is applying its proposed rate and methodology, instead of cost-based rates, on CLECs.

Qwest's policy of notifying CLECs of rate changes which CLECs must then dispute after the fact if they disagree compounds the problems created by Qwest's policy of applying SGAT rates in non-SGAT situations. CLECs must devote time and energy to verifying and disputing the bills before Qwest establishes a basis for charging the SGAT rates. Generally, Qwest does not even identify in advance when it is applying an SGAT rate, so CLECs must spend time identifying and verifying the issue.

Qwest is aware of Eschelon's long-standing position that the SGAT rates do not apply to Eschelon. Qwest should not be reporting that bills which include these rates are accurate for CLECs that have not opted in to the SGAT. Moreover, the burden to prove the rates as inaccurate in these cases should not be on Eschelon and other CLECs.

U. **Billing Accuracy**

As many of the above issues demonstrate, Eschelon does not believe its bills are accurate. Eschelon's records show that, as of the end of May 2002, Eschelon has more than $2.2M in outstanding billing disputes with Qwest spread across all Qwest states where Eschelon operates. Given this, Eschelon questions a claim that, by any realistic standard, Qwest's bills are 99-100% accurate. The disputed amounts encompass different types of disputes, including (1) inaccurate rates; (2) invalid rates not ordered by State Commissions or mutually negotiated between both parties; (3) charges that are not applicable to Eschelon such as termination penalties, exempted taxes, directory advertising, and third party toll; and (4) rates that are not TELRIC such as billing maintenance and repair charges from Qwest's FCC tariffs. Bill disputes often go unresolved for many months. It does not appear that, once long-disputed issues are resolved in a CLEC's favor, the performance results are adjusted to reflect the resolution.

Eschelon does not receive all information according to Qwest's Customer Guide to Billmate (Qwest's electronic version of its CRIS bill). Eschelon submitted a Change Request to Qwest's CMP in September of 2000 to ask Qwest to populate all fields of the billmate file. Although some corrections were made, some states, such as Washington and Oregon, do not yet have USOCs populated in all Billmate files. In the UNE-P invoices that Eschelon is now currently receiving, multiple columns in Billmate are not populated with information that is supposed to be reflected according to Qwest's Billmate Guide. In addition, Qwest's Billmate product does not break out usage for shared transport and local switching, which precludes validation of rates and usage. Validating zone prices is also affected because Qwest does not provide the CLLI code on the invoice.

In addition to the issues discussed above, 100% of the bills for UNE-Eschelon/UNE-Star are inaccurate. *See* Exhibits 8 & 11 (Affidavits of Lynne Powers and Ellen Copley).[42] Unlike UNE-P, UNE-Star is ordered, provisioned, and billed as resale. Therefore, an interim credit/true-up process (to calculate the amount due instead of the billed resale rate) is used instead of accurate billing. In March 2002 alone, Qwest eventually agreed that its credit calculation was almost $50,000 too low.[43] Therefore, even the interim process results in inaccurate charges. The bills for the UNE-Star product cannot be described as accurate. As of May of 2002, UNE-Star represents approximately 60% of Eschelon's total monthly invoice amount. This represents a substantial amount of inaccurate billing that is not reflected in the performance results reported by Qwest.

As discussed in the Powers Affidavit, Qwest's account manager for Eschelon described in an email to Eschelon the interim nature of the true-up process and the long-term plan to develop accurate billing for UNE-Star to bring it into compliance with the interconnection agreement amendment. *See* Exhibit 8 at ¶¶ 7 & 12. Despite this Qwest documentation of its commitment in 2000-2001 to mechanize UNE-Star billing and provide accurate bills, Qwest is now claiming that Eschelon orally agreed to amend the agreement so that it would not require accurate billing. This is not the case. The issue need not be reached, however, because the UNE-Star agreement precludes such an oral amendment. The UNE-Star interconnection

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[42] McLeodUSA reportedly has the same issue with inaccurate bills. *See* Supplemental Testimony of W. Clay Deanhardt, *In the Matter of a Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Before the Minnesota Office of Administrative Hearings ("OAH"), MPUC Docket No. P-421/C-02-197; OAH Docket No. 6-2500-14782-2, p. 5, lines 12-16 (July 24, 2002) ("These additional payments refund to McLeod the difference between the amount it actually pays Qwest for UNE-Star and the amount it is supposed to pay under the Eighth Amendment to its interconnection agreement. These separate payments are necessary because Qwest's billing system is not able to bill McLeod the correct amount for UNE-Star.").

[43] Although the amount of the difference varies, each month Qwest and Eschelon have different views as to the correct number, and the number has to be adjusted. The rate paid, therefore, is an approximation of the correct rate and not an accurate rate.

agreement amendment expressly provides that it "may not be further amended or altered except by written instrument executed by an authorized representative of both Parties." *See* Interconnection Agreement Amendment Terms, p. 2, ¶ 1.8 (Nov. 15, 2002). The UNE-Star agreement also expressly provides that, except as modified by the amendment, the underlying interconnection agreement "shall remain in full force and effect." *See id*. ¶ 1.8. The amendment does not modify the billing provisions of the underlying agreement, which require Qwest to accurately bill Eschelon for charges that Eschelon incurs as a result of purchasing products and services from Qwest. In both Utah and Washington, the Qwest-Eschelon interconnection agreements provide:

> US WEST agrees that in order to ensure the proper performance and integrity of the entire Connectivity Billing process, US WEST shall be responsible and accountable for transmitting to CO-PROVIDER an accurate and current bill. US WEST agrees to implement control mechanisms and procedures to render a bill that accurately reflects the services ordered and used by CO-PROVIDER.
>
> *See* Qwest-Eschelon Interconnection Agreements, WA Att. 5, ¶ 4.3.6 & UT Att. 5, 4.3.6.

Qwest should be required to deliver on its Year 2000 commitment to deliver accurate UNE-Star bills before 271 approval is granted.

Eschelon has recently started to order new UNE-P lines again. *See* Exhibit 8. Because this process commenced only recently, Eschelon has only recently started to receive invoices from Qwest and has had little time to fully review them. Review of the Utah and Washington bills is underway. A preliminary review shows that most of the same problems that Eschelon has found in other states (see below) also occur in Utah[44] and Washington. As volumes increase and more bills are received, Eschelon will have more information available for analysis.

[44] Utah is in Qwest's Central billing region. Both Arizona and Colorado are in the Central billing region as well.

As examples of the types of issues identified, in Colorado and Minnesota invoices (and, for Arizona, *see* Exhibit 12), Eschelon has found the following issues in the Qwest UNE-P bills:

1. Colorado BAN 303-B11-6766 997 (May 28, 2002)

a. Includes charges for stand-by line usage - appropriate for UNE-P?

b. Billing discounted tariff rate of $1.04 per call for directory assistance calls, rather than the correct facility-based rate of $0.34 per call.

c. Billing a discounted tariff rate for per-call activation charges (such as last call return) when these feature costs are included in the local switching/port charges.

d. Billing inaccurate non-recurring charges ("NRCs") for UNE-P installs. There are many occurrences of $75.83 charges for a new UNE-P line, when the Commission ordered rate is $57.87. In addition, for many existing UNE-P line installs, Qwest is billing Eschelon $8.35, when the ordered rate is $0.71. Neither of the higher rates mentioned have been negotiated by the parties.

e. Duplicate charges for LNP and flat rated usage charges on single ANI.

f. Qwest uses its own estimate of usage charges instead of billing them accurately in some cases. *See* http://www.qwest.com/wholesale/pcat/unepcentrex.html (UNE-P-Centrex: "Until Qwest systems are able to record and bill actual usage information, Shared Transport Originating MOU and Local Switching Originating MOU will be billed at a flat monthly rate based on assumed MOU."). Qwest unilaterally sets the estimate, and Eschelon had no opportunity to discuss and negotiate an appropriate rate.

g. Some incremental zone charges (lines outside Zone 1) are billed twice (double billing) -- once separately as an increment and then again combined with the line charge/port charge.

h. Qwest's calculation of fractional charges are inaccurate.

For Colorado, these issues by themselves account for a preliminary billing error rate of approximately 9.3%.

2. Minnesota BAN 320-Z28-2603 (May 28, 2002)

Many of the same issues present on the Colorado invoice are present on the Minnesota invoice. In addition, Eschelon has raised another issue with Qwest. Qwest is billing Centrex resale rates on UNE-P lines. Qwest responded that it will address the issue in future billing months by posting all common block lines into the correct billing system. It is burdensome, however, for Eschelon to identify this issue and then wait one or two months to determine if the problem is indeed corrected and appropriate credits applied.

For Minnesota, the UNE-P issues by themselves account for a preliminary billing error rate of approximately 18.7%.

If, taken together, all of the billing and rate issues raised by Eschelon do not change the result for billing accuracy under the PID measurement, Eschelon believes the measure is faulty and does not capture the CLEC experience. When a CLEC is as dissatisfied with the billing process as Eschelon is with Qwest's billing process, it is difficult to be told that the bills are allegedly perfect.

V. Reporting

Although Eschelon's UNE-P ordering has only recently commenced, Qwest is already reporting Eschelon's UNE-E/UNE-Star lines as UNE-P lines for purposes of the Performance Indicator Definition (PID) data. *See* Exhibit 8 (Affidavit of Lynne Powers). Previously, Qwest reported these lines as business lines -- which is how the lines appear on the bill received by Eschelon. As discussed, UNE-Star is ordered, provisioned, and billed like resale.[45] Including both UNE-Star and UNE-P in the same category makes the number of UNE-P lines (which are not billed as resale) appear greater. Creating a separate category for UNE-Star, as Qwest could have done initially, would allow a better understanding of the performance results and to which product they apply.

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[45] Although like resale, UNE-Star has additional problems because it is an attempt to place Centrex functionality on lines that were not designed to carry Centrex functionality. Therefore, UNE-Star has many provisioning problems, as described in the Powers Affidavit. *See* Exhibit 8.

In reviewing the PID data, Eschelon found that Qwest's reporting of the lines changed from business lines to UNE-P lines in approximately November of 2001.[46] At that time, Qwest changed its reporting not only on a going forward basis, but also retroactively to January of 2001 so that months previously reported as business lines were then reported as UNE-P lines. *See id.* Eschelon was not notified in advance of this change.

W. <u>Switched Access</u>

Over a period of time, Eschelon complained to Qwest that Qwest was not providing complete and accurate records from which Eschelon could bill interexchange carriers access charges for UNE-E/UNE-Star and On-net customers. As an example, if a Qwest retail customer who has selected Qwest as the intraLATA toll PIC calls an Eschelon UNE-E/UNE-Star local customer, Qwest should provide a record of that intraLATA toll call to Eschelon, so that Eschelon can bill Qwest for terminating access. Eschelon needs an accurate report of switched access minutes of use ("MOU"), so that Eschelon may properly bill interexchange carriers for access.

With respect to missing switched access minutes, Eschelon's position that MOU are missing was supported by an audit, external and internal datapoints, and Qwest's own admissions. First, an auditor retained by Eschelon made a number of calls that were not found in the access records Qwest provided to Eschelon, and Qwest did not locate those calls. Second, as a reality check, Eschelon provided Qwest data showing that the MOU provided by Qwest to Eschelon for UNE-P are substantially lower than the MOU received by Qwest, other Regional

[46] Although separate categories are used for other products (such as UNE-P-POTS), separate categories were not created for UNE-E products (such as UNE-E-POTS). If Qwest is claiming that it included UNE-E lines with UNE-P lines because there was not a separate category, Qwest could have simply created another category, as it did with UNE-P-POTS.

Bell Operating Companies ("RBOCs"), and Eschelon for on-net lines. Finally, Qwest admitted that the MOU that it provided to Eschelon did not include intraLATA toll traffic carried by Qwest. On that basis alone, the MOU were understated.

Qwest disputed Eschelon's claims as to the vast majority of the missing minutes. Recently, the number of minutes reported to Eschelon jumped significantly and became closer to the number of minutes that Eschelon has maintained it should have been receiving all along.[47] This is another, significant datapoint supporting Eschelon's position that MOU were missing for a long period of time. If Qwest was also understating MOU for other CLECs, CLECs were unable to bill interexchange carriers for access charges for that period of time.[48]

The increase in number of minutes occurred very recently, and Eschelon does not know yet whether all of these minutes will be billable or whether this increase in the number of minutes will continue.

X. Collocation and Interconnection

In its negotiation of interconnection agreements for all of the states in which Eschelon operates or is certified, Qwest and Eschelon have reached impasse with respect to certain collocation issues and has not reached resolution as to certain interconnection issues. *See* Exhibits 13-14. With respect to off-site adjacent collocation, for example, Qwest has refused to

[47] Although Qwest may claim that this is due to a change from use of an interim process to use of Daily Usage Files ("DUF"), Eschelon previously attempted to move off the interim process. Qwest asked Eschelon to return to the interim process, because the long-term process was not working at that time. In the first months of 2002 (approximately January – April), the DUF usage minutes were even lower than the number under the interim process.

[48] For a period of time ending with February 28, 2002, Eschelon and Qwest settled the switched access issue. From February 28, 2002 until the usage increased recently, minutes were missing that Eschelon otherwise could have used to bill IXCs. Even after the usage increased, Eschelon still has concerns about the issue of Qwest-carried intraLATA toll traffic.

agree to provide this type of collocation, even though Eschelon has provided to Qwest evidence that another RBOC is providing it. *See* Exhibit 13.

Qwest has used an alleged need for amendments to the interconnection agreements as a tool to delay competitors or attempt to extract an ability to charge unapproved rates from them. As an example, Qwest has taken the position that Eschelon needs to sign a contract amendment to simply terminate unwanted power to collocation space. Eschelon has identified nine collocations, including collocations in Washington and Colorado, for which Eschelon has asked Qwest to terminate power. Eschelon has pointed out to Qwest that Qwest merely needs to remove the charge from its database. No physical work is required, because Eschelon is not using the power. Qwest has caused delay – during which time Eschelon incurs this unnecessary expense – by trying to require an amendment to the interconnection agreement. No amendment is needed, however, in this situation. Eschelon is not asking Qwest to retroactively refund money paid for unused power; Eschelon is simply indicating that Eschelon is not ordering the power going forward. As this is a simple database change, it should not require either a contract amendment or a charge.

Y. <u>Change Management Process</u>

The Change Management Process ("CMP") redesign process is not fully completed, and the final stages were completed in a manner that precluded full review and participation, particularly for small carriers. When the redesign team was initially formed, the plan was to rely primarily on "working" sessions rather than activities outside of the meetings. This was, in part, due to what CLECs then viewed as an aggressive schedule. By the end of the sessions, so many documents were being circulated and so much work expected outside of the many working sessions that one or more persons could do nothing but CMP redesign work. Eschelon does not have that kind of resources. The need for this was driven more by Qwest's self-imposed 271 deadlines than outside factors.[49]

The CMP documentation is not completely finalized, and redesign meetings or calls continue. The redesigned process is only beginning to be implemented at this time. At a recent CMP monthly product and process meeting, discussions were held about whether the process was being followed and how it should apply. It is too early to conclude that Qwest is complying with the redesigned process. Eschelon has already raised, for example, at least four issues of non-compliance (Coppermax, copper availability project, Release 10.0, and LSR reject examples, *see* Exhibit 10). The CMP documentation does not include any process for dealing with compliance issues and ensuring they are corrected.[50]

Z. Cutovers

Over time, Eschelon has reported to Qwest technical loop problems, missed scheduled times, untimely lift and lays, cuts that appeared successful on day of cut but trouble occurred shortly afterward, and other cutover problems. Although many of these cutover problems have been reduced, the reduction in incidence of these problems has coincided with bi-weekly calls

[49] Although Qwest was in a hurry to try to finish, Qwest could have taken some simple steps to advance the goals of the group that it did not take. For example, with respect to the production support language developed near the end of the recent working sessions, CLECs pointed out several deficiencies in the language and provided suggestions for expanding the language. Nonetheless, at the next session, Qwest's proposed language had changed little and in fact some language had been deleted. The group then spent a day and a half, or longer, drafting language to describe Qwest's existing production support process. At one point, after the group had toiled over some language, a Qwest process specialist agreed with language drafted by the group and said words to the effect of: "yes, that is what my document says." Qwest undoubtedly has internal documentation that describes relevant portions of its existing processes. If the documentation contains confidential information, pertinent documents could have been redacted or revised before distribution to CLECs. An advantage of this approach would have been that Qwest and CLECs would be working from consistent language when implementing these processes. Instead, the redesign team had to re-invent the wheel in this and other situations. This not only took more time but also increased the likelihood that some issues may not have been covered completely or consistently. Another example of how Qwest could have advanced the meetings was to provide more operational personnel for pertinent discussions. Many of the process specialists are liaisons who do not have the extent of first-hand experience that would have benefited discussions.
[50] The CMP documentation provides for using Change Requests to request changes to the process. With compliance issues, the process itself does not require a change; Qwest needs to comply with the existing process.

held between Eschelon and Qwest in which Eschelon proactively reviews the hot cuts and Qwest's processes. Eschelon does not know whether, once Qwest receives 271 approval, Qwest will continue to devote resources to these calls for cutover analysis and review. Already, Qwest has failed to participate in the most recent scheduled calls, without even calling in advance to indicate that Qwest would not join the calls.

With respect to Qwest's reported performance on cutovers for Eschelon, Qwest cannot use those results to show that Qwest is meeting standard intervals (*e.g.*, for a parity comparison). Because of the numerous problems with Qwest's cutovers, Eschelon was forced to request longer intervals. For more than a year, Eschelon has been routinely requesting intervals longer than the standard interval to try to avoid the serious customer affecting cutover problems that occurred previously. Although Eschelon recently reduced its requested times from approximately 10 to 7 days, even the current practice is longer than the standard interval. Therefore, Qwest's improvement in its performance with respect to OP-3 is due to action on Eschelon's part, rather than proven ability to regularly meet the standard interval for Eschelon. In addition, because Eschelon has had to request a longer interval, Qwest's performance for OP-4 appears better, because orders for which the customer requests due dates greater than the standard interval are excluded from OP-4.

ZZ. <u>Tandem Failure Events</u>

Qwest had six failures at Qwest tandem switches in its region in three months (seven since October of 2001). In addition, on May 21, 2002, a Qwest Litespan 2000 went down in Salt Lake City, Utah (Draper Central Office). A tandem failure should be rare. The tandem failure events occurred as follows:

October 2-4, 2001 Minnesota

March 18, 2002	Washington
March 19-20, 2002	Utah
March 29, 2002	Oregon
May 16, 2002	Washington
June 20, 2002	Utah
June 26, 20002	Minnesota

Eschelon has submitted informal complaints to the state commission staffs in Utah, Washington, Minnesota, and Oregon about these tandem failure events. Qwest has not indicated that different conditions exist in any other Qwest state that would prevent the problem from occurring in those states as well.

Each of the failures has adversely affected Eschelon and its end-user customers. For example, in the Salt Lake City tandem failure in June of 2002, approximately 1 out of every 2 long distance calls failed. Approximately 1 out of every 3 local calls failed. While these numbers would vary throughout the outage, this helps describe the problem. The June Utah outage lasted for more than 2 hours. The previous outage in Salt Lake City lasted 14 hours. Customers are threatening to leave, and some have left, Eschelon as a result of these situations.

Qwest has not provided Eschelon with evidence to show that these problems will not continue to occur. Tandem failures are particularly harmful to small carriers, such as Eschelon, which do not have the volume to attract IXCs to build trunking to them. Carriers should not have to build unnecessary trunking, or otherwise incorporate inefficiencies in their network, because Qwest's network is unreliable.

The problems are Qwest failures at the tandem. Qwest sent notices to CLECs of its tandem failures. Qwest labeled those notices as confidential, however, which deters CLECs from distributing the notices to customers to show that the problem is at Qwest's tandem. The fact that Qwest has a tandem failure is something customers should know. If there was a cable cut affecting many customers, for example, customers would be told about it. Customers have asked Eschelon for evidence that the problem was in Qwest's network. Eschelon asked Qwest to provide non-confidential documentation confirming that the failures were at the Qwest tandem. But, Qwest has refused to put anything in writing for Eschelon to use in explaining the problem to end-user customers.

The need for this documentation, however, was created by the conduct of Qwest representatives that received calls from Eschelon customers and led them to believe the problems were the fault of Eschelon. Some customers inadvertently called Qwest when the problems occurred. Eschelon reported to Qwest that some of these customers claim to have received incorrect information from Qwest. The proper procedure is for Qwest's representatives to refer calls from our customers to Eschelon, but it does not appear that they have followed that procedure consistently.

Eschelon's end-user customers are experiencing service problems. They are businesses and tell us that this affects their business. Eschelon's business is also adversely affected. There is not only an immediate financial impact from losing customers but also a longer-term financial detriment from the damage to Eschelon's reputation. And, on a going forward basis, Eschelon needs to be able to rely on Qwest's network and to plan its business with confidence in the network.

III. CONCLUSION

As this information regarding Qwest's commercial performance demonstrates, approving Qwest's Application at this time would be premature. Approval to provide in-region, interLATA service should be based upon Qwest's demonstrated compliance with the 14 point checklist, not upon promises to comply in the future, nor upon mere statements that it has changed processes and systems to allegedly bring it into compliance. Promises and statements do not equal action or positive results. Until Qwest has taken actions that can be measured and evaluated and shows adequate performance with respect to such measures, Qwest has not demonstrated that it has sufficiently opened its markets to competition as required under Section 271 of the Act.

August 1, 2002 ESCHELON TELECOM, INC.

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